Comment Summary and Responses
Ballona Creek Metals TMDL
March 28, 2005 Draft

1. Kenneth C. Farfsing, City of Signal Hill
2. Desi Alvarez, Executive Advisory Committee (EAC)
3. Timothy Piasky, Construction Industry Coalition on Water Quality (CICWQ)
4. Rita L. Robinson, City of Los Angeles, Bureau of Sanitation
5. Brian E. Wall, Chevron
6. Clifford H. Moriyama, California Coalition for Clean Water (CCCW)
7. Mike Wang, Western States Petroleum Association (WSPA)
8. Karen Ashby, California Stormwater Quality Association (CASQA)
9. Tracy Egoscue and Mark Gold, Santa Monica Baykeeper and Heal the Bay
10. John J. Harris, Richards|Watson|Gershon, representing cities of Beverly Hills
11. David W. Burhenn, Burhenn and Gest, representing the County of Los Angeles Department of Public Works
12. Valerie Nera and Michael Rogge, Workable Approach to Environmental Regulation (WATER)
13. Richard Montevideo, Rutan and Tucker, representing Coalition for Practical Regulation (CPR)
14. Ray Tahir, TECS Environmental, representing the Cities of Commerce, Montebello, San Gabriel, South Pasadena, Vernon
Submitted After Deadline
15. Michael Flake, California Department of Transportation

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1.1	Signal Hill	5/9/05	In light of the fact that there has been no redlined version or other documentation showing changes that were made to the revised metals TMDLs and the fact that no staff responses to previous comments have been provided, the Regional Board should extend the comment period and continue the hearing date. Unless the members of the public have had the opportunity to review responses to previous comments and to consider the same in providing further comments, the Regional Board has failed to provide adequate due process of law and a fair opportunity to be heard.	The number of changes and the degree of reorganization in the March 28, 2005 draft prohibited the release of an underline/ strikeout version. Staff summarized the changes in the letter to interested parties dated March 28, 2005, at the April 7, 2005 Board workshop, and at the April 12, 2005 staff workshop. However, due to the difficulty that commentors may have in identifying specific changes, staff will consider all comments on the March 28, 2005 draft TMDL - not just comments on the revised portions. However, staff will not consider extending the comment deadline or continuing the TMDL. The Regional Board has more than satisfied procedural and substantive due process. While a quasi-legislative action does not trigger the full panoply of constitutional protections, the Regional Board staff has nonetheless provided nearly one year for interested persons to consider and to comment on the proposed action. Rather than circumscribing comments solely to changed items, the Regional Board has continued to receive comments that are in anyway related to the proposed TMDL. Further, there is no right to respond to responses to comments. Regional Board staff endeavor to provide detailed written responses to all timely

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				received comments so as to inform the board members and the public. This approach is consistent with title 23, California Code of Regulations, section 3779. The release of responses prior to the final Board meeting satisfies this intent.
2.1	EAC	5/10/05	The EAC requests an extension of the comment period for the metals and toxicity TMDLs, from May 12, 2005 to at least May 24, 2005, because responses to comments on earlier draft TMDLs have not been posted.	See response to comment number 1.1 herein.
3.1	CICWQ	5/10/05	The development of a WLA for construction based upon total acreage is highly suspect because it uses one snapshot in time in order to establish WLA's for construction. The method for calculating the total acreage in this snapshot using the State Board enrollment database is not clear. It is highly likely that this "snapshot" in time would be substantially different depending on when the "snapshot" was taken.	Staff assumed a relatively constant turnover of construction projects in the urbanized portion of the Ballona Creek watershed to obtain an approximate estimate of their acreage. This was only done for the purpose of allocating the total storm water load among the storm water permittees. Please note that although the WLAs are expressed as mass per day, they are actually concentration-based, since the mass-based WLAs are simply calculated by multiplying the critical flow by the concentration-based numeric target. Also individual construction sites received a loading per acre.
3.2	CICWQ	5/10/05	The dry weather waste load allocation of zero for construction is unjustified. The language in Order No. 99-08 DWQ does not equate to the complete prohibition of non-storm water discharges from construction sites. Therefore, a dry-weather WLA of zero for construction sites unreasonably conflicts with existing regulations.	The implementation language in the BPA and staff report have been revised to exempt non-storm water flows authorized under 99-08 DWQ from the dry-weather waste load allocation equal to zero.

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3.3	CICWQ	5/10/05	Atmospheric deposition and natural background levels are not adequately considered in wet-weather WLA for construction. In addition, the estimation of natural background levels of metals seems to grossly misstate the actual contribution. It is clear that -- based on atmospheric deposition and natural background levels -- meeting the wet-weather construction WLA would be extremely difficult and unreasonably expensive, if not physically impossible at any cost.	The implementation language in the BPA and staff report have been revised to allow industry-wide BMP effectiveness studies to be submitted to the Board for their consideration. Individual permittees would be deemed in compliance if they implemented Regional Board approved BMPs. Staff notes that only a relatively small portion of the amount of metals from indirect atmospheric deposition is discharged to surface waters. The amount of discharge is dependent on the percent of impervious surface, but Sabin et al. reported transmission efficiencies of 10% to 30%. Increasing permeable surfaces and other BMPs will further reduce the transport of metals originating from indirect atmospheric deposition to surface waters.
3.4	CICWQ	5/10/05	To the extent the Waste Load Allocations reflect a regulatory disregard for naturally occurring pollution and/or for pollution more properly attributable to other unregulated public activities unrelated to construction activities, undue burdens foisted on construction activities could rise to the level of a "regulatory taking," or a violation of substantive due process. Under the United States Supreme Court's "rough proportionality" and "rational basis" standards.	The WLAs are established to implement existing water quality standards. To the extent a construction site is mobilizing pollutants and discharging storm water containing those mobilized pollutants, the operator is discharging pollutants within the legal ambit of the Clean Water Act. It is the discharger's action that is therefore contributing to a violation of water quality standards. No U.S. Supreme Court

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				precedent supports a conclusion that the Regional Board's establishment of WLAs would rise to a constitutional taking in violation of the Fifth Amendment. No sources are disregarded. Waste load allocations are assigned to all sources in the watershed, including nonpoint sources. Mass-based load allocations are developed for direct atmospheric deposition. A grouped mass-based waste load allocation is developed for storm water permittees (Los Angeles County MS4, Caltrans, General Industrial and General Construction) by subtracting the mass-based load allocations from the total loading capacity. Concentration-based waste load allocations are assigned to all other point sources in the watershed.
3.5	CICWQ	5/10/05	The Proposed Amendment continues the Regional Board's longstanding failure to properly account for economic considerations – as required to comply with California Water Code sections 13241 and 13263. Under section 13263, the Regional Board is required to consider factors outlined in section 13241 when prescribing "requirements as to the nature of any proposed discharge" of storm water.	See response to comments on the July 12, 2004 draft – comment number 4.11.
3.6	CICWQ	5/10/05	On-site measurements will be required of storm water runoff for comparison to a "concentration-based" waste load allocation based on remote USEPA benchmarks. These are therefore effluent limitations expected to be met at the edge of the construction site. The TMDL lacks any indication of how a wet-weather event would be determined at the	Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the

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			construction site, how much metals would actually be expected from construction sites, how much of the metals from construction sites actually makes its way to the receiving water, when it might arrive and how much of the metals yield that does make it to the receiving water actually contributes to the violation of the water quality standard. There is no reason to believe that implementation of the current requirements of the State General Construction Permit and MS4 Permits would result in non-compliance with the WLA's. Construction projects should only need to implement additional BMPs (above and beyond those already required) if it is found that; 1) existing requirements are not sufficient to keep MS4 dischargers from being able to comply with their WLA downstream; and 2) truly representative sampling indicates that construction activities contribute substantially to the exceedances.	definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment. The implementation language in the BPA and staff report have been revised to allow industry-wide BMP effectiveness studies to be submitted to the Board for their consideration. Individual permittees would be deemed in compliance if they implemented Regional Board approved BMPs.
3.7	CICWQ	5/10/05	On-Site monitoring of all construction sites is infeasible because of the large sample sizes that must be collected to capture the variability of storm water. On-Site monitoring is unwarranted because construction projects are already heavily regulated through the State General Construction Permit and the ordinances of MS4 operators.	The implementation language in the BPA and staff report have been revised to allow industry-wide BMP effectiveness studies to be submitted to the Board for their consideration. Individual permittees would be deemed in compliance if they implemented Regional Board approved BMPs.
4.1	City of Los Angeles	5/12/05	The Regional Board should extend the implementation period from 15 to 18 years, and reevaluate the schedule at the TMDL re-opener, and expressly incorporate recognition of the ability to grant an extension to the schedule if needed for the City to fully comply with the WLAs.	Staff believe that 15 years is sufficient time to implement the TMDL in this watershed because it is significantly smaller than the Los Angeles River watershed. Although smaller than the LA River watershed, Ballona Creek is the largest subwatershed draining to the Santa Monica Bay, and is a significant contributor to the impairment of

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				some high-recreational use Santa Monica Bay Beaches. The Ballona Creek Bacteria TMDL is scheduled to be released in 2006. Staff believes that implementation strategies should consider both bacteria and metals impairments, and together these impairments are among the highest priority in the region.
4.2	City of Los Angeles	5/12/05	The Regional Board should extend the coordinated monitoring plan development period from 6 to 12 months, to allow for inter-agency coordination and to identify and address new challenges associated with metal focused monitoring.	The proposed BPA and staff report have been revised to make this change.
4.3	City of Los Angeles	5/12/05	The City requests a minimum of 24 months for completion of a draft implementation report and 30 months for the final report.	The deadline for submittal of the draft implementation plan has been extended to 48 months and the deadline for submittal of the final implementation plan has been extended to 54 years. However, cities need to move forward with implementation as soon as possible based on the information provided in the TMDL. Cities can revise implementation plans when new information becomes available.
4.4	City of Los Angeles	5/12/05	The results of special studies should be due in the 5th year and the TMDL should be reconsidered in the 6th year.	The TMDL date was moved up to five years after the effective date of the TMDL, so that the reconsideration would occur prior to the first compliance milestone.
4.5	City of Los Angeles	5/12/05	The Basin Plan amendment should be clarified to indicate that BMPs will be translated into compliance through the MS4 NPDES program in an iterative, adaptive manner.	See responses to comments on the July 12, 2004 draft – comment Nos. 3.1 and 3.4.

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4.6	City of Los Angeles	5/12/05	The cost estimates may be underestimated. It is not possible to comment on the reasonableness of the estimates due to the lack of data such as pollutant removal efficiency, reliability, land acquisition costs, operation and maintenance costs, additional costs for bacteria removal, media disposal, and amount of flow that must be captured to achieve 100% compliance. The Regional Board should acknowledge the limitations of implementation strategies and identify alternative and less expensive implementation technologies.	The cost analysis is based on reasonably foreseeable compliance methods. The staff report discusses the removal efficiencies, reliability, and operation and maintenance costs (which include media disposal costs) associated with the potential compliance method. Any potential additional costs of bacteria removal are not required. The staff report merely states that the costs analysis reflects the potential costs of compliance with multiple TMDLs based on likely implementation scenarios. O&M costs are provided in the staff report and are discussed further in the references for the cost assessment section. The EPA-estimated infiltration O&M costs include inspections, sediment removal, and total rehabilitation upon failure. The EPA-estimated sand filter O&M costs include media replacement and disposal, removal of debris and vegetative growth. The staff report has been clarified to more clearly state cost assumptions, BMP selection, and sizing assumptions. Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the definition of a storm that will address

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				multiple TMDLs to the Board for their consideration as a Basin Plan amendment. For further discussion of costs and BMP selection, see responses to comments on the July 12, 2004 draft – comment Nos. 3.11, 4.11, 4.11.a, and 4.11.b.
4.7	City of Los Angeles	5/12/05	The Regional Board should recognize the importance of source prevention by gaining participation from agencies with authority over air issues. The Basin Plan amendment and staff report should specify how source control for air deposition will be attained.	Staff has met with the South Coast Air Quality Management District, Southern California Coastal Water Research Project, Southern California association of Governments, and LA County Department of Public Works to discuss aerial deposition issues. Participants in the meeting agreed to meet quarterly to address these issues.
4.8	City of Los Angeles	5/12/05	In the Source Analysis section of the amendment should show the relationship between air deposition sources and water quality impacts. The SCCWRP study citation in the staff report should also be cited in the amendment language. In the load allocation section, the Board should provide a load allocation for indirect air deposition, so that MS4 permittees may better direct source control measures and BMPs.	See responses to comments on the July 12, 2004 draft – comment No. 4.5. Because indirect air deposition is not assigned a load allocation, and is instead accounted for in the WLAs for the storm water permittees, a discussion of indirect air deposition is not necessary to understanding the TMDL requirements, and should not be included in the amendment language.
4.9	City of Los Angeles	5/12/05	The City will develop hardness data from its hardness monitoring program and requests that the Regional Board consider the hardness data submitted when assessing impairment when the TMDL is	Comment noted. The TMDL will be reconsidered five years from the effective date of the TMDL based on additional data.

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			reconsidered.	
4.10	City of Los Angeles	5/12/05	Areas of open space should be included as part of the watershed since open space areas contribute large amounts of sediment and metals are known to attach to sediments.	See responses to comments on the July 12, 2004 draft – comment No. 3.34. Staff notes that the MS4 system itself is not so much a source of pollutants, but serves to collects and conveys stormwater through a point source in a manner that bypasses the natural systems that would otherwise reduce pollutant discharges to surface waters. The MS4 systems and the increase in impervious surfaces has done much to increase the transport of pollutants to Ballona Creek.
4.11	City of Los Angeles	5/12/05	The City requests that one of the proposed ambient monitoring locations be moved from just above the confluence of Ballona Creek and Sepulveda Channel to the approximately ½ mile upstream due to concerns for safety and access.	The Regional Board will consider slight modifications to the proposed ambient monitoring locations during the review and approval of the monitoring plan.
4.12	City of Los Angeles	5/12/05	The City does not feel that the BMPs used to meet Trash TMDL requirements will reduce a significant amount of sediments/metals.	Some sediment and associated pollutant removal has been reported in vortex separation BMPs and other full-capture devices. The staff report merely states that it is important to document reductions in metals loading already being achieved via BMPs currently employed under the Trash TMDL.
4.13	City of Los Angeles	5/12/05	The Board should address associated construction costs for similar types of diversion and treatment projects such as SMURFF.	Diversion and treatment was not analyzed as a potential means of compliance for the purposes of the cost assessment. Diversion and treatment is proposed as a potential means of compliance only. For further

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				discussion of costs and BMP selection, see responses to comments on the July 12, 2004 draft – comment Nos. 4.11, 4.11.a, and 4.11.b.
4.14			The cost figures should be revised to include infrastructure costs to be incurred by the City to abide with AQMD air standards due to increased street sweeping and the additional O&M costs per mile of vacuum assisted street sweeping.	See response to comment No. 4.6 herein.
5.1	Chevron	5/12/05	Chevron supports and incorporates by reference the comments submitted by WSPA dated August 26, 2004 and May 12, 2005.	See response to WSPA comments herein.
5.2	Chevron	5/12/05	With respect to Chevron's Van Nuys terminal, the TMDL treats this facility more stringently than every other storm water discharger because it is enrolled under an individual permit, especially since wastewater discharges from the facility no longer exist and the facility only discharges runoff.	Although this comment refers to the Los Angeles River metals TMDL, changes made to the LA River TMDL in response to this comment were also made to the Ballona Creek TMDL. The staff report and BPA have been revised to state, "Permittees that hold individual NPDES permits and solely discharge storm water may be allowed (at Regional Board discretion) compliance schedules up to 10 years from the effective date of the TMDL to achieve compliance with final WLAs." This allows individual NPDES permits for storm water the same compliance period as the general storm water permits. This change acknowledges staff's intent to enroll many of the individual NPDES permits for storm water into the watershed-specific general storm water permit, upon adoption of the general permit.

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6.1	California Coalition for Clean Water	5/12/05	This comment applies to the Ballona Creek Toxic Pollutants TMDL.	The comment does not apply to the Ballona Creek Metals TMDL
6.2	California Coalition for Clean Water	5/12/05	Applying CTR criteria directly to storm water is inappropriate. EPA stated in CTR proceedings that they believe existing best management practices (BMPs) are the appropriate alternative to never-to-be-exceeded numeric permit limits. A November 22, 2002 guidance memo states that 'if it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this.	See response to comments on the July 12, 2004 draft – comment Nos. 3.1 and 4.2. The regional board has considered the memorandum in establishing this TMDL. The memorandum explicitly states that WLAs should be expressed numerically. The memorandum continues by noting EPA's expectation is that the TMDL will include language allowing WLAs to be converted into non-numeric BMPs in individual permits. The TMDL specifically allows this for municipal storm water dischargers. The commenter is conflating WLAs in a TMDL, with a more specific 'water quality-based effluent limitation," which is derived in a permit. EPA recognizes in their regulations that a WLA is a 'type" of water quality-based effluent limitation, but that they clearly have different applications. WLAs are a planning concept. WQBELs are a permitting concept. The November 22 guidance memorandum from USEPA acknowledges this distinction.

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6.3	California Coalition for Clean Water	5/12/05	The TMDLs are based on a never-to-be-exceeded numeric limit that fails to recognize the inherent variability in storm flows.	Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
6.4	California Coalition for Clean Water	5/12/05	The draft interim benchmark approach is too short. The benchmarks should not be considered enforceable limits.	The benchmarks shall become enforceable permit conditions five years from the effective date of the TMDL. However, please note that the TMDL has been revised to state that permit conditions may be complied with through the installation, maintenance, and monitoring of Regional Board-approved BMPs. At five years from the effective date of the TMDL, permittees would begin the iterative process to meet the final WLAs. If benchmarks were still just a trigger after five years, permittees would not be able to work their way towards compliance with the final WLAs. Please note that the BPA and staff report have been revised to also state that the final WLAs will be expressed as permit conditions, such as the installation, maintenance, and monitoring of Regional Board-approved BMPs.
6.5	California Coalition for	5/12/05	The TMDLs make the cities responsible for metals pollution from sources out of their control such as vehicular related atmospheric	See response to comments on the July 12, 2004 draft, comment No. 6.4.

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	Clean Water		deposition. The Regional and State water boards should work with EPA to address source control issues instead of forcing unnecessary capital improvement projects upon local governments and other permittees.	Staff has met with the South Coast Air Quality Management District, Southern California Coastal Water Research Project, Southern California association of Governments, and LA County Department of Public Works to discuss aerial deposition issues. Participants in the meeting agreed to meet quarterly to address these issues.
6.6	California Coalition for Clean Water	5/12/05	The Board has failed to prepare a complete functionally equivalent document, which is not equivalent to an EIR.	See responses to comments on the July 12, 2004 draft – comment No. 4.14.a.
6.7	California Coalition for Clean Water	5/12/05	EPA did not complete an economic analysis when adopting CTR because it would not result in substantial investments by local government beyond the existing (1996) NPDES permit programs. The Regional Board is now moving forward to apply CTR in the Metals TMDLs without proper economic analysis. The decision in the City of Burbank v. State Water Resources Control Board No. S1119248 mandates that a full economic analysis under section 13241 be conducted when the regulations imposed by the state exceed federal requirements.	The Supreme Court's decision in *City of Burbank v. SWRCB*, which is not yet final, has no applicability to this TMDL. First, the the TMDL is clearly mandated by federal law. Second, the TMDL relies on federal water quality standards established by USEPA, so it clearly does not exceed the federal requirements. Third, in implementing an existing water quality standard under Water Code section 13242 there is no cross-reference to the provisions of Water Code section 13241—as there was in the permitting section discussed in *City of Burbank*. Fourth, assuming that a section 13241 analysis is required and that it would some how "relax" the TMDL, the provisions of section 303(d) of the Clean Water Act require the establishment of a TMDL to

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				implement existing water quality standards without regard to economic considerations. As such, the more appropriate portion of the *City of Burbank* decision is that part finding that state law must yield to federal law under the Supremacy Clause of the U.S. Constitution.
7.1	WSPA	5/12/05	In general, WSPA agrees with this benchmark-based BMP approach as provided for the first five years (although, as noted below, more clarity and detail is needed regarding how the BMP process will be triggered and implemented).	Comment noted. The staff report and BPA have been revised to add more clarity regarding how the BMP process will be triggered and implemented. See response to comment No. 6.4 herein.
7.2	WSPA	5/12/05	EPA does not regard benchmark levels as an appropriate basis for permit limits, or their exceedance as grounds for enforcement action. WSPA urges the Regional Board to eliminate the enforcement of benchmark-based permit limits in the second half of the interim period. Throughout the interim period, benchmarks should remain a trigger for evaluating BMPs, as provided in the federal Multi-Sector General Permit in which these benchmark levels were originally developed.	See response to comment No. 6.4 herein.
7.3	WSPA	5/12/05	No legal or equitable basis is presented for providing MS4s and Caltrans permittees with an implementation schedule that is more than twice the 10 year duration of benchmark-based WLAs for industrial and construction general permittees. In fairness, WSPA recommends that all sources receive the same 22-year implementation schedule.	Facilities subject to the industrial and construction general permits are much smaller than the MS4 and Caltrans permittess, with more consistent sources of metals loadings and fewer responsible agencies to coordinate. Please note that the MS4 and Caltrans permits receive a 15-year implementation schedule for the Ballona Creek TMDL.

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7.4	WSPA	5/12/05	WSPA urges the Regional Board to apply the benchmark-based interim WLAs – revised as suggested above to be implemented as benchmarks triggering BMP evaluation (and not enforceable limits) through the entire interim period – reasonably and equitably to all industrial storm water discharges, whether or not covered by the general permits. Unlike discharges of process wastewater which tend to be relatively stable in their composition, volume and flow, storm water discharges vary widely in their timing, duration, quantity, flow and background levels of contamination. Moreover, there is no legal or policy basis for treating permittees under individual NPDES and other general permits differently from those covered by the industrial and construction general permits.	See response to comment Nos. 6.4 and 7.5 herein.
7.5	WSPA	5/12/05	There is no WLA for individual NPDES permits solely for discharge of storm water. This class of discharges appears to have been inadvertently omitted. An allocation must be provided for these permittees. Consistent with our previous comment, the same implementation schedule should be fairly applied to such discharges, with the benchmark-based interim WLAs, triggering BMP evaluation, in effect for the same interim period as for other classes of permittees.	The staff report and BPA have been revised to state, "Permittees that hold individual NPDES permits and solely discharge storm water may be allowed (at Regional Board discretion) compliance schedules up to 10 years from the effective date of the TMDL to achieve compliance with final WLAs." This allows individual NPDES permits for storm water the same compliance period as the general storm water permits. This change acknowledges staff's intent to enroll many of the individual NPDES permits for storm water into the watershed-specific general storm water permit, upon adoption of the general permit.
7.6	WSPA	5/12/05	It is highly likely that the remediation treatment discharges would not consistently meet limits based on the concentration-based WLAs as proposed in the Metals TMDLs. We urge the board to provide for the	"Other NPDES permittees," which would include permits for discharge from remediation treatment, include a provision

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			appropriate implementation, including use of monthly averages and an interim implementation schedule (again, applying the benchmark-based interim WLAs, triggering BMP evaluation, for the same interim period as for other classes of permittees), to allow remediation permittees for UST remediation projects sufficient time to adequately monitor, assess and implement appropriate treatment or other options to meet the WLA.	for a compliance schedules up to 5 years to meet permit requirements established to implement the WLAs. Permit writers will translate numeric WLAs into applicable permit limits.
7.7	WSPA	5/12/05	There is no basis to establish a strict WLA equal to zero, to be achieved by entirely eliminating routine and minor dry weather discharges. The Regional Board has done no analysis to demonstrate that it is feasible to implement "improved BMPs to eliminate the discharge" of all such non-storm water flows; nor has it considered the cost of doing so as required by law. At a minimum, should the zero WLA for dry weather discharges be retained (or modified to another numeric WLA), in fairness it should be accompanied by the same interim implementation schedule as is provided for wet weather discharges.	The BPA and staff report have been revised to state that non-storm water flows authorized by Order No. 97-03 DWQ are exempt from the dry-weather waste load allocation equal to zero. Instead, these authorized non-storm water flows shall meet the reach-specific concentration-based waste load allocations assigned to the "other NPDES permits". The dry-weather waste load allocation equal to zero applies to unauthorized non-storm water flows, which are prohibited by Order No. 97-03 DWQ. Staff recognizes that dry-weather flows are already regulated by the general permit. One of the general permit conditions is that the discharge may not contribute to an exceedance or violation of water quality standards. Assigning the same dry-weather WLAs as the "other NPDES permits" to these dry-weather flows provides insurance that the flows will not contribute to or cause an exceedance of the water quality standards and specifically the CTR.

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7.8	WSPA	5/12/05	Based on other statements in the Basin Plan amendments, it appears that what the Regional Board actually contemplates is the imposition of both interim (in the second five years, when benchmarks become enforceable) and final WLAs directly as numeric effluent limits in permits. If the Regional Board does not intend to impose interim and final WLAs directly as numeric effluent limits, that intent must be stated more clearly in the Basin Plan amendments and the TMDL. The attached Flow Science Report: *Storm Water and Best Management Practices Analysis* (February 2, 2005) demonstrates *that continued reliance on BMPs remains technically justified, and that determining scientifically defensible numeric limits for storm water discharges remains infeasible.*	See response to comment No. 6.4 herein. Staff does not intend to impose interim and final waste load allocations directly as numeric effluent limits. The fact that a WLA shall be expressed as a WQBEL does not require a numeric WQBEL—the SWRCB has said that in its Los Coyotes/Long Beach decisions and the Court of Appeal said it in the Tesoro case. Additional language has been added explaining that effluent limitations may be expressed as permit conditions, such as the installation of Regional Board-approved BMPs. However, consistent with USEPA's November 22, 2002 guidance memorandum on TMDLs and storm water, there must be sufficient information available to the NPDES permit writer to justify using BMPs. As a result, the actual permit conditions will be established on a case-by-case basis consistent with applicable federal law.
7.9	WSPA	5/12/05	WSPA recommends that the Metals TMDLs be revised to clarify that EPA's standard for triggering the BMP process – i.e., monitoring results "considerably above benchmark levels" – will apply and that analytic results from a single grab sample will not be considered as exceedances. In addition, we ask that the Regional Board identify the process by which design criteria for implementing appropriate and cost-effective structural BMPs will be determined. In addition, it should be clear that storm water volumes in excess of the design criteria would be authorized to by-pass the structural BMPs without being considered in	Language has been added to the staff report and BPA clarifying how monitoring will trigger the BMP process. Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the

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			non-compliance with the WLAs.	definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
7.10	WSPA	5/12/05	If, per the comments above, it is the Regional Board's intent to apply these WLAs in the form of numeric limits, rather than relying on BMPs, then the inevitable outcome will be that the CTR criteria will be applied inappropriately as not-to-be-exceeded, end-of-pipe limits, once the Metals TMDLs are adopted and NPDES permit limits must be consistent with the WLAs. EPA never intended that CTR be applied directly to storm water through effluent limitations.	See response to comment Nos. 6.4, 7.5, and 7.8 herein.
7.11a	WSPA	5/12/05	The modeling and analysis relied on as a justification for the TMDL does not appear to be either sufficient or appropriate to support the implementation of the proposed actions. WSPA respectfully requests that the Regional Board address each of these deficiencies identified in the attached FlowScience report, *Technical Review of Revised Total Maximum Daily Load for Metals, Los Angeles River and Tributaries, Published 3/28/05*.	Many of the Flow Sciences' comments are specific to the Los Angeles River Metals TMDL; do not apply to the Ballona Creek Metals TMDL, and are not addressed herein.
7.11.b			Several peer review reports by independent scientists, which the Regional Board was required to obtain pursuant to Health & Safety Code section 57004, reflected similar concerns with the technical analysis. WSPA was provided with copies of the peer review reports by Regional Board staff on April 27, 2005. WSPA incorporates Dr. Schroeder's report by reference in these comments and requests that the Regional Board justify its reasons for rejecting these criticism.	This comment does not apply to the Ballona Creek Metals TMDL.
7.12	WSPA	5/12/05	Because direct air deposition occurs at a constant rate it will constitute a larger proportion of the TMDL during lower flow events (which offer less dilution) and a smaller proportion of the TMDL during larger flow events (which offer more dilution). Therefore, the assumption that direct	The load allocation for direct air deposition is expressed as a constant (in terms of kg/day) during dry weather. Atmospheric deposition during wet weather is not

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			air deposition will represent a constant proportion of the TMDL (0.002) is incorrect. The wet-weather LAs for open space were calculated using the highly uncertain wet-weather model. Insofar as the combined storm water allocation is dependent on the poorly calculated direct air deposition and open space contributions (as indicated in the revised TMDL staff report, p. 56), it is incorrect. The technical deficiencies in the open space analysis result in an extremely conservative and unjustified low LA, resulting in inappropriately greater WLAs to point sources.	constant, but the relative amount of direct atmospheric depositions over water compared to the indirect atmospheric deposition over land is proportional, assuming similar rainfall. In the Ballona Creek TMDL, staff assigned wet-weather allocations based on surface area. Therefore, the allocation, for direct atmospheric deposition over water is proportional to the surface area of the waterbody. If additional information is provided in the future as to the maximum amount of atmospheric deposition that can be deposited during a wet-weather day, the allocations may be revised accordingly. The comment on open space loading does not apply to the Ballona Creek Metals TMDL.
7.13	WSPA	5/12/05	In WSPA's August 2004 comments on the July drafts, we objected to the inclusion of unlisted reaches in the TMDLs as technically unjustified and improper under the Clean Water Act. Those comments still apply to the March 2005 drafts. The claim that the upstream reaches "cause or contribute" to exceedances in listed reaches is not scientifically supportable. The very fact that these unlisted upstream reaches were not listed means that metals concentration data collected in them indicate that they have relatively good water quality. If these reaches have fairly good water quality, in what sense are they significant contributors to poor water quality downstream? Accordingly, there is no technical or logical justification for developing	See response to comments on the July 12, 2004 draft – comment No. 4.3. Only addressing listed reaches would be contrary to the thrust of the Clean Water Act, as it would require all water bodies to become impaired before they could be protected. It would also prevent coordinated control of water quality problems. Most importantly, it may prevent the attainment of water quality standards in impaired water bodies if the upstream sources of the impairment could

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			TMDL allocations for unlisted reaches. In the *Cities of Arcadia et al. v. State Board* case, the court rejected the claim that the Los Angeles Estuary could legitimately be included in the L.A. River trash TMDL. The draft Regional Board Resolutions and Basin Plan amendments adopting the Metals TMDLS should be revised to provide for the deletion of unlisted reaches if the cities prevail on this issue on appeal.	continue. This latter point is especially true of persistent elements, such as the metals addressed by this TMDL. Finally, as an implementation program for existing water quality objectives, the TMDLs are clearly permissible at any time under Water Code section 13242. The wholistic approach of addressing all known impairments in a comprehensive action makes the best use of state and local agency resources.
7.14	WSPA	5/12/05	WSPA incorporates herein by reference the remaining comments from our August 26, 2004 comment letter on the July drafts of the Metals TMDLs. These comments have not been adequately addressed in the revised March 2005 drafts of the Metals TMDLs and associated draft Basin Plan amendments, CEQA analyses and Board resolutions.	See response to comments on July 2004 draft.
7.15	WSPA	5/12/05	From attached Flow Science Report: The basis for the revision of figures 12a – 12d is not clear from the staff report.	The revision was made in response to previous comments. See responses to comments on the July 12, 2004 draft – comment No. 3.5 The staff report states that the figures (figures C-1 through C-6 in Ballona Creek Metals TMDL) represent allowable loads for a given storm volume, compared to model predicted loads, to aid storm water permittees in BMP design.
7.16	WSPA	5/12/05	From attached Flow Science Report: Some of the text describing the modeling report and model results was deleted from the staff report. Some of the text described the weakness of the model.	This comment does not apply to the Ballona Creek Metals TMDL.
7.17	WSPA	5/12/05	From attached Flow Science Report: The application of the wet weather model to calculate contributions from open space is questionable.	This comment does not apply to the Ballona Creek Metals TMDL.

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7.18	WSPA	5/12/05	From attached Flow Science Report: On the whole, very little has changed with the Los Angeles River modeling approach since the previous version of the TMDL and our prior technical review and comments on the modeling remain appropriate (FSI, 2004).	This comment does not apply to the Ballona Creek Metals TMDL.
7.19	WSPA	5/12/05	From attached Flow Science Report: Our view of the wet weather modeling agrees substantially with that of peer reviewer Dr, Schroeder.	This comment does not apply to the Ballona Creek Metals TMDL.
7.20	WSPA	5/12/05	From attached Flow Science Report: The SIP does not apply to regulation of storm water discharges. The reasonable potential and effluent limit calculation procedures provided for in the SIP are inappropriate for intermittent, highly variable, and complex nature of storm events. There is little or no support for applying CTR criteria directly to storm water discharges, as never-to-be-exceeded values, and without the consideration of dilution.	See responses to comments on the July 12, 2004 draft – comment No. 4.2.
7.21	WSPA	5/12/05	From attached Flow Science Report: It appears that the Board miscalculated the dry-weather numeric targets for reaches 3, 4, 5, and 6 and Bell Creek using the strict CTR methodology that was specified in the staff report.	This comment does not apply to the Ballona Creek Metals TMDL.
7.22	WSPA	5/12/05	From attached Flow Science Report: It appears that the Board has miscalculated the Los Angeles River wet-weather numeric targets for cadmium, copper, and zinc.	This comment does not apply to Ballona Creek Metals TMDL.
7.23	WSPA	5/12/05	From attached Flow Science Report: The removal of dry weather load capacities for reaches and tributaries that are not impaired is an improvement from the previous draft. However a load capacity still remains for lead in Tujunga Wash, which is not impaired.	This comment does not apply to Ballona Creek Metals TMDL.
7.24	WSPA	5/12/05	From attached Flow Science Report: It is unclear why the curves in 12a through 12d are simply not linear. It may be that this apparent lack of linearity is simply due to the irregular storm volume intervals chosen for	The figures (figures C-1 through C-6 in Ballona Creek Metals TMDL) would be linear if they plotted volume versus load, but

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			the plots or the combination of this irregularity with the fact that both the x- and y-axes in the plots are logarithmic.	the figures show *storm* volume versus load. The x-axis is not continuous because it shows predicted individual storm events, sorted by size.
7.25	WSPA	5/12/05	From attached Flow Science Report: The general methodology used to account for contributions from open space and direct atmospheric deposition in dry-weather seems reasonable.	Comment noted.
7.26	WSPA	5/12/05	From attached Flow Science Report: The assumption in the revised staff report that direct air deposition will represent constant proportions of the total load in dry and wet weather is incorrect. The air deposition rate would be constant in both dry and wet weather, but the flows in the river are not.	See response to comment No. 7.12.
7.27	WSPA	5/12/05	From attached Flow Science Report: The wet-weather model underestimates loads from open space and seems a very thin basis on which to develop load allocations for open space areas.	This comment does not apply to the Ballona Creek Metals TMDL.
7.28	WSPA	5/12/05	From attached Flow Science Report: Because of the underestimated contribution from open space, actual metals fluxes from open space would be significantly higher than the open space load allocation, rendering compliance with the LAs and WLAs uncertain and beyond the control of the dischargers in the region.	This comment does not apply to the Ballona Creek Metals TMDL.
7.29	WSPA	5/12/05	From attached Flow Science Report: Because the POTWs are allowed to discharge at a concentration higher than the wet weather target at Wardlow in recognition of the limitations of treatment facilities, other dischargers (particularly storm water dischargers) should be provided with a similar allowance for moderate and larger wet weather events. Particularly for moderate storm events where POTW flows remain a significant proportion of total flow, it seems unreasonable to require storm water dischargers to reduce their discharge concentrations below acute CTR criteria.	This comment does not apply to the Ballona Creek Metals TMDL.

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7.30	WSPA	5/12/05	From attached Flow Science Report: While the mass-based allocations may be specified in the TMDL, the implementation and monitoring sections rightly acknowledge that most storm water allocations will effectively be end-of-pipe concentration based-limits equal to CTR criteria, which is discouraged within the CTR document.	See response to comments on the July 12, 2004 draft – comment No. 4.2. Staff provides the option of allowing compliance to be based on concentration. However, if flow-weighted composite sampling is available, assessing compliance based on loading would be optimal.
7.31	WSPA	5/12/05	From attached Flow Science Report: The TMDL develops allocations for unlisted upstream reaches because they drain to downstream impaired reaches. The very fact that upstream reaches were not listed means that available data indicate that they exhibit relatively good water quality and will not cause or contribute to exceedances of water quality downstream.	See response to comment No. 7.13 herein.
8.1	CASQA	5/12/05	The development of a watershed specific general permit for industrial and construction storm water permittees would create confusion and inefficiency in relationship to the statewide general permits because for many dischargers, operations are conducted in more than one region. CASQA is concerned with the precedent set by the Los Angeles Regional Board that may encourage other regional boards to adopt watershed specific permits when TMDLs are involved. This fragmented approach will lead to contentious public hearings, lack of coordination between the State and regional boards, and lost opportunities for collaboration. Compliance with the statewide general permit does not preclude having additional watershed specific requirements. With regard to monitoring requirements, the storm water general permits already give the Regional Board authority to require additional monitoring.	The Regional Board will work closely with the State Board to ensure an orderly implementation of the TMDLs. Staff believe general permits serve a valuable purpose for efficiency and consistency. However, federal and state law (including the existing permits) recognize that circumstances may require alternate general or individual permits, and general permits are only allowed to the extent they address similarly situated dischargers. When a discharger discharges to an impaired water body, it is in a different class than

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				dischargers to unimpaired waters. As TMDLs are established, they are by necessity developed on a watershed basis. While staff believe a Regional Board-adopted general, watershed permit is the most efficient approach, the option to have the State Board incorporate watershed requirements into is general permit can be considered in the future.
8.2	CASQA	5/12/05	The water Boards attempt to pass along its responsibility to the MS4s for overseeing monitoring of industrial and construction dischargers further complicates the MS4's programs.	MS4 oversight of monitoring is only offered as a suggestion, but staff believes it would increase efficiency and encourage cooperation, and ultimately benefit the MS4 permittees.
8.3	CASQA	5/12/05	This comment is specific to the Ballona Creek toxic pollutants TMDL.	Not Applicable to this TMDL.
9.1	Baykeeper and Heal the Bay	5/12/05	The timeframes imposed by the draft TMDL are too relaxed. The implementation periods for the metals TMDLs for LA River and Ballona Creek should be no more than ten years, unless an integrated, watershed-based, multi-contaminant approach is taken. In this case the implementation plan should require year-round compliance no later than 2021, the same year when the Santa Monica Bay Beaches bacteria TMDL must be met. The Regional Board should also provide a more detailed definition of IWRP so that criteria for meeting IWRP, and therefore granting an extended implementation time (to 2021), are clearly defined.	The longer implementation schedules will facilitate compliance through an iterative, adaptive management approach which, if successful, would be significantly less costly than any containment and end-of pipe treatment strategy. Staff also acknowledges that not all areas within these watersheds are suitable for groundwater recharge, a key component of the IWRP. As described in the Cost Analysis in the TMDL staff report, staff expect that a mixture of approaches

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				including institutional, structural BMPs, and groundwater recharge will be required in different parts of the watershed based on local conditions.
9.2	Baykeeper and Heal the Bay	5/12/05	For the general industrial and general construction stormwater permits, setting five-year interim wet-weather limits and specifying an iterative BMP process for meeting final wasteload allocations is a sensible approach. However, the interim limits should be considered enforceable permit limits by the end of the first five years, since these are presumably the concentrations that these dischargers are already capable of meeting. If these are enforceable limits, then they represent measurable benchmarks as well as providing real incentive for general permittees to evaluate, appropriately design, and improve their BMPs when necessary.	Permittees will have enforceable permit conditions. They must install Regional-Board approved BMPs, which have been demonstrated to result in attainment of waste load allocations. The need to demonstrate the effectiveness of BMPs, which will attain WLAs and acquire Regional-Board approval, will provide the incentive to evaluate and improve BMPs in the first five years.
9.3	Baykeeper and Heal the Bay	5/12/05	The phased approach for the municipal stormwater permits is not as logical. There is no justification provided for the spatial approach to benchmarking the implementation of numeric limits in the municipal stormwater permits.	While multiple alternatives for determining compliance may exist, staff proposes that a phased, area-based reduction is appropriate for the metals TMDL. The language in the BPA and staff report requiring metals reduction in areas of the watershed "served by the storm drain system" ensure that permittees will address areas shown to have significant metals contributions first.
9.4	Baykeeper and Heal the Bay	5/12/05	The supposedly "conservative" choices made for total-to-dissolved metals conversion factors and for using a hardness value that is less than the CTR default hardness value for calculating the wet-weather metals targets do not qualify as MOSs, from either the technical or legal standpoints. Further, there are numerous other decisions within each of these TMDLs that are decidedly non-conservative. Because the MOSs	The use of the default dry-weather conversion factor and a wet-weather hardness value that is less than the CTR default hardness value are conservative assumptions. Staff does not believe that other decisions in the calculation of the

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			are never quantified, we do not know if these non-conservative decisions in fact outweigh the implicit MOSs that the Regional Board claims exist. To remedy this, the Regional Board should include an explicit 10% margin of safety, calculated by multiplying all the proposed numeric targets by 0.9 to obtain sufficiently protective final numeric targets.	numeric target and WLAs were non-conservative or that they would outweigh the conservative assumptions used in the implicit margin of safety.
9.5	Baykeeper and Heal the Bay	5/12/05	Using the acute toxicity limits to determine wet-weather numeric targets is a non-conservative assumption. In addition, using median hardness concentrations to calculate the wet-weather numeric targets will lead to lethal wet-weather toxicity in the river *up to half the time* during storms. These two non-conservative decisions by the Regional Board will fail to protect aquatic life from the toxic effects of metals in stormwater runoff. There is no justification for providing such minimal protection of the aquatic life and recreational fishing beneficial uses in waters of the United States. The 10^{th} percentile hardness values should be used to calculate the wet-weather numeric targets based on CTR acute toxicity values, or the wet-weather numeric targets should be based on CTR chronic toxicity values, since wet weather events frequently last longer than the typical acute exposures used to develop acute toxicity limits.	The median wet-weather hardness value is less than the CTR default value, which is conservative. The acute values were selected as being more appropriate for wet-weather because exposures occur over a brief period. Because of the variability in hardness values during wet weather, the 10th percentile of hardness data would not accurately represent the hardness values during storm water conditions.
9.6	Baykeeper and Heal the Bay	5/12/05	For dry-weather targets other than copper, the conversion factors are the CTR default values, which were very close to the conversion factors calculated using LA River data for both cadmium and zinc. Linear regressions did not show statistically significant relationships between dissolved and recoverable metals for any of these metals. Therefore the CTR default values for these metals in dry weather were the only scientifically valid choice and were not selected to provide any margin of safety.	This comment does not apply to the Ballona Creek Metals TMDL.

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9.7	Baykeeper and Heal the Bay	5/12/05	The site-specific conversion factor was calculated using a "site-specific partition coefficient (Kp) and total suspended solids". There is no information on how a site-specific partition coefficient was developed at a site where there was no statistical relationship between dissolved and particulate metals. If a site-specific partition coefficient is to be used to determine copper numeric targets, then the Regional Board must demonstrate that there are sufficient data to accurately determine the partition coefficient.	This comment does not apply to the Ballona Creek Metals TMDL.
9.8	Baykeeper and Heal the Bay	5/12/05	The wet-weather numeric targets for copper, lead and zinc were based on site-specific conversion factors developed from LACDPW storm water data. For copper and zinc, the site-specific conversion factors are smaller than the CTR default conversion factors, therefore they are the opposite of conservative. Furthermore they are not based on robust statistical relationships. The R^2 values for the copper and zinc relationships are 0.69 and 0.61 respectively. The use of site-specific conversion factors in this case does not provide an MOS and in fact increases the uncertainty associated with the numeric targets.	This comment does not apply to the Ballona Creek Metals TMDL.
9.9	Baykeeper and Heal the Bay	5/12/05	Non-conservative choices were made in developing dry-weather numeric targets for Ballona Creek by using the median hardness values, meaning that for lead meaning that the lead numeric target is protective half of the time, and during the other half of the time the lead levels will be toxic. For the wet-weather targets, site-specific conversion factors are used which are lower than CTR default conversion factors, with R^2 values less than 0.8.	The Regional Board staff did not incorporate the most conservative value at every decision point. However, the values selected are representative of the seasonal conditions in the waterbody. The site-specific conversion factors for wet-weather are not non-conservative and they are supported by the literature which suggests that an even greater portion of metals is associated with particulates in wet-weather. It is noted that the wet-weather hardness value selected in the TMDL is lower than the CTR default

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				value.
9.10	Baykeeper and Heal the Bay	5/12/05	Assigning separate allocations for dry and wet weather is required and is separate from a margin of safety. Decisions which are based on sound scientific data and analysis are not considered a margin of safety even when they lead to lower effluent limits. This is because they are based on existing knowledge, rather than based on conservative choices intended to be protective of water quality where there is a lack of specific knowledge.	Site-specific conversion factors for dry-weather were not used because a statistically significant relationship could not be determined based on available data. However, the application of the CTR-default conversion factors is still a conservative assumption. Staff does not believe that other decisions in the calculation of the numeric target and WLAs were non-conservative or that they would outweigh the conservative assumptions used in the implicit margin of safety
9.11	Baykeeper and Heal the Bay	5/12/05	The mass-based WLAs are 44-66% higher than they would be if they were based on real discharge numbers. This effectively awards a dilution credit to these dischargers when in fact no dilution occurs. Not only does this not make sense from a technical standpoint, it also serves to detract from the implicit margin of safety in this TMDL. Since the implicit MOS is never quantified, the use of design flows to calculate WLAs for the LA River POTWs may increase their allowed loads by an amount that far exceeds the margin of safety being relied upon in this TMDL. Wasteloads must be assigned based on actual discharged volumes rather than design flows because the existing S. 303(d) listed impairments are caused by existing discharges, not design flows.	This comment is not applicable to Ballona Creek.
9.12	Baykeeper and Heal the Bay	5/12/05	These comments focus only on the impacts of loading allocations on the water-column impairment by metals. Although the Regional Board has developed sediment toxicity TMDL for the Ballona Creek estuary	The implementation schedule and proposed implementation approaches for the Metals and Toxic Pollutants TMDLs are linked.

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			concurrently with this water-column based metals TMDL, the two are not linked on a policy or technical level. The linkage needs to be explicitly expressed in both TMDLs, and the approaches should be consistent.	Attainment of the Metals TMDL numeric targets for the water column will lead to attainment of the Toxics TMDL numeric targets for sediment. Special studies will allow for the evaluation of partition coefficients between the water column and sediment to assess the contribution of water column discharges to sediment concentrations in the Estuary.
9.13	Baykeeper and Heal the Bay	5/12/05	The Regional Board and staff should be mindful of the broad societal costs imposed by metals and toxics in our waters.	Comment noted. The staff report shall be revised to include a discussion of the benefits of reducing metals in Ballona Creek.
10.1	City of Beverly Hills	5/12/05	The comments from the County of Los Angeles and other MS4 permittee cities by reference.	See responses to County and other MS4 permittee comments.
10.2	City of Beverly Hills	5/12/05	An adequate basis for numeric targets has not been specifically documented in the submittal and the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity have not been provided. Furthermore, seasonal variations and critical conditions have not been accounted for.	Numeric targets have been set to achieve water quality objectives as contained in CTR and are based on site specific conditions in the river. The assimilative capacity of the river was assessed by calculating the loading capacity of the river during dry and wet weather. Seasonal variation has been addressed by developing separate waste load allocations for dry and weather. Critical conditions were addresses by assigning a critical flow during dry-weather and by using a load-duration curve approach for wet

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				weather.
10.3	City of Beverly Hills	5/12/05	The Regional Board is adopting a "rule" within the meaning of Health & Safety Code § 57004 without having subjected the rules to the requisite scientific peer review. That process should take place before moving forward on this TMDL.	The scientific portions of the TMDL have been peer reviewed by an external peer reviewer in conformance with Health & Safety Code section 57004. The Board has considered the peer review comments and made revisions to the scientific portion of the TMDL where appropriate. See separate response to peer review comments.
10.4	City of Beverly Hills	5/12/05	The proposed TMDL is establishing target reduction goals before baseline studies are completed. Additional scientific, technical, economic, and environmental impact information is necessary prior to establishing a TMDL.	The proposed BPA and staff report allow 15 years for wet weather compliance by the MS4 and Caltrans permittees. The TMDL will be reconsidered at year 5 to allow for potential revised waste load allocations and implementation schedules based on information obtained in the special studies, which are due by year 4.
10.5	City of Beverly Hills	5/12/05	The Regional Board has not analyzed the costs and economic impacts of the proposed TMDL in a manner contemplated by the CWA and Water Code § 13241.	See responses to comments on the July 12, 2004 draft – comment No. 4.11.
10.6	City of Beverly Hills	5/12/05	§13165, and §§ 13225(c) and 13267(b) require that the economic burden of requiring technical monitoring reports must bear a reasonable relationship to the needs for those reports.	See responses to comments on the July 12, 2004 draft – comment No. 3.9. Water Code section 13165 is not applicable to this TMDL. Not only does the TMDL not rely upon Water Code section 13165, but it could not. The TMDL is being established by the Regional Board. Water Code section 13165, does not apply to the Regional Board; it only applies to the State Board. Further, the

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				proposed BPA does not specify a technical monitoring program or report to be provided by local agencies.
10.7	City of Beverly Hills	5/12/05	The draft of the TMDL contains new programs and mandates which go beyond the specific requirements of the CWA or EPA's regulations implementing the CWA. These are new state programs which are not being specifically required by the federal government. If the RWQCB wishes to impose these programs, it needs to provide a means to pay for their implementation.	See responses to comments on the July 12, 2004 draft – comment No. 4.15.
10.8	City of Beverly Hills	5/12/05	The additional information collection requirements of the TMDL were not contemplated nor are they consistent with the requirements of the federal Paperwork Reduction Act. Accordingly, these requirements may be invalid for failure to comply with the Paperwork Reduction Act.	The Federal Paperwork Reduction applies only to federal agencies. The federal act has no application to data collection requirements issued by the Regional Board.
10.9	City of Beverly Hills	5/12/05	The exemption from CEQA by 14 CCR § 125251(g) does not apply because the TMDL does not conform to the requirements of a certified regulatory program. The Board failed to identify potential significant environmental effects, including impacts to water, public service, and utilities and service systems. The Board has not complied with 23 CCR § 3779(a) because the revised staff report and CEQA-related documents do not address prior comments and the notice of hearing for the revised documents allows only 21 days between the comment cutoff and the Board hearing.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, and 4.a.1. through 4.a.32. The Regional Board has complied with section 3779, subdivision (a) of title 23, California Code of Regulations. All comments received more than 15 days before the Board meeting have been addressed in a written response to comments. The responses to comments are available before the June 2, 2005, Board meeting. The regulation only requires that the written responses be available at the

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				Board meeting.
10.10	City of Beverly Hills	5/12/05	The Regional Board has not complied with the Administrative Procedures Act which require a showing of "necessity", "authority", "clarity", "consistency", "reference", and "non-duplication". The Regional Board has not complied with Government Code § 11346.5 nor other procedural requirements of the APA.	The proposed BPA and staff report have been revised to provide clarity. For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for an existing water quality objective and is necessary under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The need and reference for it to be a Basin Plan amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board). The Regional Board cannot prescribe the method of achieving compliance with the TMDL. Staff is therefore unable to describe the nature of all potential actions which are necessary to achieve compliance with the TMDL.

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10.11	City of Beverly Hills	5/12/05	It must be confirmed that the complete factual basis for the TMDL is contained solely within the reports identified in Section 9 of the staff report.	The staff report, including the reference section and the appendices represent all of the documents relied upon in the TMDL. Additional "documents considered" are included in the administrative record.
10.12	City of Beverly Hills	5/12/05	Waste load allocations should not be made to upstream cities in the absence of data specifically supporting such allocations.	The Regional Board has the authority to assign allocations to upstream reaches in order to meet TMDLs for downstream-impaired reaches. Ballona Creek is listed for copper, lead, selenium, and zinc. The Regional Board can therefore assign waste load allocations to all upstream reaches and tributaries in order to meet the TMDL in Ballona Creek. The metals TMDL protects some listed, impaired water body from metals loading by upstream, unlisted water bodies that are contributing to the downstream impairment.
10.13	City of Beverly Hills	5/12/05	The TMDL should focus on the implementation of BMPs.	See response to comments on the July 12, 2004 draft – comment No. 3.1.
10.14	City of Beverly Hills	5/12/05	The TMDL should focus on permittee action only when the primary causes of violations are sources over which individual cities have control.	See response to comments on the July 12, 2004 draft – comment No. 6.4.
11.1	County of Los Angeles	5/12/05	EPA stated in CTR proceedings that end-of-pipe technologies would not be required to achieve compliance with the CTR standards in storm water, but rather existing non-structural BMPs would be required. A November 22, 2002 guidance memo states that "if it is determined that a BMP approach (including an iterative BMP approach) is appropriate to	See comment No. 6.2 herein.

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			meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this. Unfortunately, the implementation methods suggested for the proposed TMDL, while it is impermissibly vague and fails to meet the requirements of section 13242 of the Water Code, are not non-structural, iterative BMPs, but structural BMPs.	
11.2	County of Los Angeles	5/12/05	The CTR or SIP was never intended to apply to storm water discharges nor was it intended to be applied without consideration of dilution or as never to be exceeded values. It is anticipated that Regional Board staff's response to this comment is that because the CTR standard is intended for specified receiving waters in the LA River watershed, it must be employed as the numerical objective for the TMDL. However, during wet weather the receiving waters are composed principally of storm water flows. Were the Regional Board to adopt the CTR criteria as numerical objectives for wet weather flows, it would be doing so in clear violation of the rationale for the CTR criteria, without evidence in the record, and in an arbitrary and capricious manner.	See responses to comments on the July 12, 2004 draft – comment No. 4.2.
11.3	County of Los Angeles	5/12/05	The REC-1, REC-2, and WARM and COLD beneficial uses designations in several reaches and tributaries should be reviewed prior to the adoption of the TMDL.	Aquatic life-related beneficial uses are viable in concrete lined channels and are entitled to the protection afforded in national policy that discharges of toxic pollutants in toxic amounts shall be prohibited. Regional Board staff believe it is reasonable and appropriate to carry out the express requirements of Congress to establish TMDLs at a level that implement existing water quality standards (33 U.S.C. 1313(d)(1)(C)) and to carry out national

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				policy to prohibit the discharge of toxic pollutants in toxic amounts (33 U.S.C. 1251(a)(1)(3).) The commentor's assertion that the State Board is "moving towards" removing REC-1 and REC-2 beneficial uses is not true. As a result of Regional Board actions two years ago, contact recreational uses are suspended during high-flows, and only under very specific circumstances.
11.4	County of Los Angeles	5/12/05	The proposed amendment violates the Requirements of Water Code § 13242 because it contains no description of the nature of actions which are necessary to achieve the objectives of the metals TMDL. Instead, the Staff Report contains a series of loosely described non-structural and 30.5ctural BMPs. Staff conducted no analysis of the ability of these BMPs to achieve compliance with the objectives.	See responses to comments on the July 12, 2004 draft – comment No. 4.8.
11.5	County of Los Angeles	5/12/05	While the revised TMDL recognizes the impact of nonpoint sources, it fails to suggest how load allocations will be addressed beyond a statement that they will be regulated through the authority contained in sections 13263 and 13269 of the Water Code. The TMDL should account for the open space controlled by the National Park Service.	The authority contained in sections 13263 and 13269 of the Water Code is sufficient to implement the load allocations.
11.6	County of Los Angeles	5/12/05	The Resolution proposing to adopt the amendment does not indicate that the Regional Board considered, or will consider the factors set forth in section 13241 of the Water code. The Arcadia court found that, because the Trash TMDL represents an amendment of the Basin Plan, Section 13241 applies. State Board Office of Chief Counsel has concluded that the Regional Board has an affirmative obligation to consider economics when adopting a TMDL (see memorandum prepared by Sheila K. Vassey of the Office of Chief Counsel attached as Exhibit 4 to the Rutan & Tucker letter.)	See responses to comments on the July 12, 2004 draft – comment Nos. 4.11.

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11.7	County of Los Angeles	5/12/05	The analysis of the two structural BMPs in the staff report is based on the treatment of low flows; there is no assessment of how to treat high-flows. Moreover, the nature of the watershed, including dominant soil types, may hinder the effectiveness of infiltration technology, which often requires pretreatment. The Flow Science report submitted with the August 26, 2004 County comment letter discusses the relative inability of lower-cost BMPs to remove dissolved metals. The costs estimates for the infiltration trenches and sand filters are based on incomplete assumptions, such as not expressing costs in 2005 dollars.	Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment. See also responses to comments on the July 12, 2004 draft – comment No. 4.26. Cost assumptions are clearly stated in the revised staff report.
11.8	County of Los Angeles	5/12/05	The cost estimates for the suggested structural BMPs are inadequate as they exclude costs of land acquisition, conveyance systems, pretreatment devices, and surge control. Also, the costs estimates used a 0.5 inch storm size criteria; the more realistic Caltrans 1.71 inch standard should be employed. There are no cost estimates for other structural BMPs, including wet- or dry-weather diversions, nor the cost of the recommended IRP program. Given the extent of these additional costs, such technologies do not meet the "maximum extent practicable" test set forth in the Clean Water Act. The Board should consider the reports (attached as Exhibits 34, 35, and 36 to the comments of Rutan and Tucker) which suggest far greater costs for BMPs.	See responses to comment Nos. 4.6 and 4.13 herein. The Cost analysis assumes a mixture of methods to be used, which collectively will bring the watershed into attainment with the CTR criteria. Although, certain BMP devices might be sized for 0.5 or a 1.0 inch storm, it is assumed that this device would be just one component of a treatment train. In the Caltrans BMP retrofit pilot program discussed in the staff report, infiltration trenches were designed to treat 1 inch of runoff and sand filter were designed to treat 0.56 to 1 inches of runoff. TMDLs are not limited by the maximum extent practicable technology standard of section 402(p)(3)(B)(iii) of the CWA.

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				TMDLs are planning tools under section 303 of the CWA that shall be established solely "to implement the applicable water quality standards with seasonal variations and a margin of safety." (33 U.S.C. 1313(d)(1)(C).) Moreover, CWA section 402(p)(3)(B)(iii) requires that MS4 dischargers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*." (Emphasis added.) Even if section 402(p)(3)(B) applied to this TMDL, federal and state courts have uniformly held that the italicized portion of section 402(p)(3)(B) allows NPDES permitting authorities (such as the state) to require compliance with water quality standards. (*Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159 & *BIA v. SWRCB* (2004) 124 Cal.App.4th 866.) When dealing with an impaired water body, it is not only "appropriate" under section 402(p)(3)(B) to include other water quality-based requirements, but consistent with the Clean Water Act's purposes of restoring and protecting our nations waters

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				and the national policy to prohibit discharges of toxic pollutants in toxic amounts, the additional water quality-based requirements would be compelled under section 303(d) of the CWA. See response to comments submitted by Rutan and Tucker (specifically comment No. 13.5)
11.9	County of Los Angeles	5/12/05	To the extent that the Regional Board is attempting to apply TMDL WLAs to unlisted water bodies, it does so in violation of the Clean Water Act. If it is the position that the requirements of state law require such application, the Water Code requires that the factors set forth in Water Code section 13241 be considered. *City of Burbank v. State Water Resources Control Board,* 2005 DJDAR3870.	See response to comment Nos. 6.7 and 7.13 herein. TMDLs are required for impaired water bodies. As detailed extensively throughout the TMDL and responses to comments, the TMDLs are established for impaired waters or for tributaries that cause or contribute to an impairment in the downstream, listed water bodies. The Commenters' suggestion is contrary to the thrust of the Clean Water Act, as it would require all water bodies to become impaired before they could be protected. It would also prevent coordinated control of water quality problems. Most importantly, it may prevent the attainment of water quality standards in impaired water bodies if the upstream sources of the impairment could continue. This latter point is especially true of persistent elements, such as the metals addressed by this TMDL.

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				Finally, as an implementation program for an existing water quality objectives, the TMDLs are clearly permissible at any time under Water Code section 13242. The wholistic approach of addressing all known impairments in a comprehensive action makes the best use of state and local agency resources.
11.10	County of Los Angeles	5/12/05	The Regional Board should acknowledge that most sources of metals in urban runoff and storm water are from sources beyond the control of municipalities, such as atmospheric deposition, tires, brake pads, and activities on private properties. The failure to properly identify and quantify load allocations for nonpoint sources, including from state and federal facilities, schools and universities, would violate the Clean Water Act	See responses to comments on the July 12, 2004 draft – comment No. 6.4.
11.11	County of Los Angeles	5/12/05	The aerial deposition of metals, due to air pollution, is a factor completely beyond the control of municipalities. Noted again is the recent case of *Communities for a Better Environment v SWRCB,* Cal. App. 4th 1089 (2003).	See responses to comments on the July 12, 2004 draft – comment No. 4.5.
11.12	County of Los Angeles	5/12/05	The TMDL has distinguished dry and wet weather based on stream flow, as opposed to rainfall. We submit that this distinction is not useful for several reasons. Structural BMPs and many nonstructural BMPs are designed based on rainfall. The County's rain gauge network is far more extensive than the stream flow network. And, the entire storm drain system has been designed based on rainfall and land uses.	The Metals TMDL expresses waste load allocations as a function of flow. A definition of a storm based on rainfall would not be suitable because assimilative capacity is a direct function of river flow, and there is imperfect correlation between rainfall and flow, especially during rainfall of events of less than 0.1 inch. The intensity and duration of rainfall vary throughout the watershed. The loading capacity and allocations, and

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				the distinction between wet and dry weather must therefore be a function of flow.
11.13	County of Los Angeles	5/12/05	The proposed TMDL has no upper flow limit or upper rainfall event limit. Designing and building BMPs to handle every possible storm is obviously impossible and, if this requirement is attempted to be implemented through the MS4 permits, goes beyond the maximum extent practicable standard.	Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
11.14	County of Los Angeles	5/12/05	The CEQA analysis improperly segments the project by stating that a separate CEQA review process will likely be required during the implementation of the TMDL. Furthermore, where impacts are identified, staff has consistently assumed that there are, in fact, feasible mitigation measures for every potential adverse impact and has refused to acknowledge that some of the impacts may not be susceptible of any feasible mitigation.	See response to comment No. 10.9 herein.
11.15	County of Los Angeles	5/12/05	There is also no alternative set forth for the proposed implementation schedule in violation of 23 Cal. Code Reg. § 3777(a)(2).	See responses to comments on the July 12, 2004 draft – comment No. 4.14.a.
11.16	County of Los Angeles	5/12/05	The responses to comments have not been provided to stakeholders as of the date of these comments. The CEQA checklist notes that it, the report, and the "responses to comments prepared by staff" comprise the CEQA documentation for the proposed TMDL. While a certified regulatory program may use its own environmental documentation in lieu of an EIR or mitigated negative declaration, but it must, among other things, make that documentation available for review and comment by the public and other agencies. Pub. Resources Code §	There is no right for the public to respond to responses to comments. Regional Board staff endeavor to provide detailed written responses to all timely received comments so as to inform the board members and the public. This approach is consistent withitle 23, California Code of Regulations, section 3779. The release of responses prior to the

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			21080.5(d)(3(B). Moreover, the State Board's CEQA regulations, which are applicable to the Regional Board, state that "upon completion of the written report" prepared in conjunction with an Environmental Checklist, the Notice of Filing shall be provided. 23 Cal. Code Reg. § 3776(c).	final Board meeting satisfies this intent.
11.17	County of Los Angeles	5/12/05	The statement of overriding considerations does not meet the requirements of 14 Cal. Code Reg. § 15093, which requires that such a statement "be supported by substantial evidence in the record." Moreover, the lead agency must balance the benefits of a project against its unavoidable environmental risks. Such a balancing has not occurred in the CEQA documentation for the proposed TMDL, because there has been no consideration or analysis of the environmental risks.	See response to comment No. 10.9 herein. The substantial evidence is contained in the TMDL staff report and the response to comments, demonstrating the federal requirement to implement the established water quality standards for metals in the impaired water bodies.
11.18	County of Los Angeles	5/12/05	The Checklist assumes that there will be no unstable earth conditions, increase in erosion, changes in deposition or erosion of beach sands or modifications of channels or exposure of persons to geologic hazards. There is no discussion of the impacts of the construction of structural BMPs, which may cause unstable earth conditions due to the injection of water into the subsurface and adverse geological conditions. Moreover, changes in the pattern of water flow could result in changes to the beds of unimproved streams as well as changes in the pattern of siltation and beaches. Also, the suggested "mitigation," of siting the BMPs in an area without adverse earth impacts, assumes without any evidence that such areas will exist.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12 and 4.a.3 to 4.a.6. The staff report references local studies of potential structural BMPs (Caltrans, 2004) which demonstrate that there are areas with suitable soil and subsurface conditions for infiltration and that it is a technically feasible and effective compliance strategy for the Los Angeles River watershed. The argument that no suitable areas for infiltration exist would be speculative and is not supported by substantial evidence.

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11.19	County of Los Angeles	5/12/05	The Checklist assumes no creation of objectionable odors; however, the storage of urban runoff or stormwater in catch or detention basins, one suggestion for wet-weather BMPs, could result in such odors as well as other nuisances. Moreover, the short-term impacts ascribed to air emissions do not take into account the emissions from sweeper equipment, as well as impacts from increased traffic congestion due to the construction of BMPs.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, 4.a.7, and 4.a.16. The assertion that there could be a significant increase in air pollution due to street sweepers is an unsubstantiated opinion and a speculative possibility. Sweepers are already in use. The TMDL only suggests increasing frequency and efficiency and replacing existing sweepers with improved models. Odors from the retention of storm water are not a reasonable foreseeable impact.
11.20	County of Los Angeles	5/12/05	The Checklist assumes environmental impacts in a number of subcategories, but concludes generally that the impacts are positive. There are, however, negative impacts that were not discussed, including the possible subsurface disposal of pollutants infiltrating into structural BMPs and the discharge of eroded sediments into waterways. As the Court in *County of Kern* held, the negative impacts of projects with otherwise positive impacts must be evaluated in the CEQA process.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, 4.a.9 and 4.a.10. The assertion that implementation of BMPS would cause the discharge of eroded sediments into waterways is an unsubstantiated opinion and a speculative possibility. The proposed structural BMPs are designed to *remove* sediments.
11.21	County of Los Angeles	5/12/05	The Checklist admits that the BMPs considered for TMDL implementation could create a "significant adverse effect" on aquatic life habitat. No analysis of these impacts is accomplished, however, and the Checklist concludes, without analysis, that the positive impacts on water quality would override "marginal losses in habitat." It is difficult to understand how a "significant adverse effect" could be translated into "marginal losses in habitat," but neither the Checklist nor the Staff Report provide any assistance.	See responses to comments on the July 12, 2004 draft – comment Nos.4.12 and 4.a.11.

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11.22	County of Los Angeles	5/12/05	The discussion of Noise impacts in the Checklist concludes that the impacts would be "limited and short-term." This conclusion is rebutted by the fact that operation of similar BMPs for the trash TMDL had to be curtailed due to the extreme noise associated with some BMPs. Moreover, to the extent that pump trucks will have to be employed to routinely clean out structural BMPs, which is likely, the noise impacts will not occur only in construction but in the operation of the BMPs.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, 4.a.12 and 4.a.16.
11.23	County of Los Angeles	5/12/05	The Checklist acknowledges the potential for adverse impacts on existing land uses, but asserts that "projects may be designed to address the need for more parks and wildlife habitat." This hope for mitigation ignores the fact that there may be no available land area or funding for the creation of "more parks and wildlife habitat." Moreover, the Checklist fails to detail how the construction of structural BMPs might conflict with existing land uses.	See responses to comments on the July 12, 2004 draft – comment No. 4.12. Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures, in accordance with 14 CCR 15091, that could be adopted by to avoid negative impacts. Such measures include the implementation of projects that address multiple needs, including public parks and wildlife habitat in addition to water quality protection. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
11.24	County of Los Angeles	5/12/05	The Checklist acknowledges no impacts on Population and Housing but, as was noted above, the construction of structural BMPs may require the condemnation of residences, commercial structures and other facilities.	See responses to comments on the July 12, 2004 draft – comment No. 4.12. While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to

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				sacrificed housing. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. Furthermore, based on the estimated size constraints discussed in Appendix III of the staff report, the area required to site structural BMPs is significantly less than the total urbanized portion of the watershed. It is not reasonably foreseeable that there would be a need to displace housing for this limited area. The extent to which housing would be affected by implementation of the TMDL would be purely speculative.
11.25	County of Los Angeles	5/12/05	The Checklist acknowledges only temporary alterations to traffic. It is plain that the construction of thousands of structural BMPs, along with conveyance structures, will cause significant disruption of traffic. These short-term effects must, under the governing case law, be evaluated in a CEQA document.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12 and 4.a.16
11.26	County of Los Angeles	5/12/05	The Checklist concludes, without analysis, that the only impacts on Public Service will be with respect to the maintenance of the BMPs themselves and monitoring of the TMDL. The Checklist ignores the potential for impacts on general municipal services, such as police and fire, if the costs of implementation must be borne from general municipal budgets. Moreover, the construction of BMPs could adversely affect parkland areas.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, 4.a.18-4.a.20 and 4.a.33.
11.27	County of Los Angeles	5/12/05	Under Utilities and Service Systems impacts, the Checklist acknowledges impacts on stormwater drainage, there is no discussion of	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12, 4.a.43-

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			the adverse impacts on such systems, nor is there any discussion of mitigation measures that may be required. Nor is there any discussion of the impacts on solid waste disposal from having to remove debris and waste from collection facilities associated with structural BMPs.	4.a.29.
11.28	County of Los Angeles	5/12/05	The Checklist concludes, among other things, that the proposed Basin Plan Amendment will not degrade the quality of the environment nor have cumulative adverse impacts. These conclusions contrast starkly with the CEQA Initial Study prepared in connection with the City of Los Angeles' IRP, which concluded that the construction of BMPs associated with that project. The Initial Study has been attached as Exhibit 19 to the comments of Rutan & Tucker. We hereby incorporate this exhibit as though set forth in full herein.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12 and 4.11.b.
11.29	County of Los Angeles	5/12/05	The checklist and staff report do not meet the statutory requirements for a substitute environmental document. Alternatives are discussed in the Checklist and in the Staff Report (but not in the responses to comments which, as noted above, have yet to be provided to the public). Neither the Checklist nor the Staff Report provide any meaningful mitigation or alternatives, but merely vague assurances that have no empirical basis. The Staff Report also fails to provide any specific mitigation measures that could be adopted by dischargers. While the Secretary of Resources has certified the basin planning process as exempt from certain requirements of CEQA, a certified regulatory program still must comply with CEQA's remaining policies and requirements. *Environmental Protection Information Center v. Johnson* (1985) 170 Cal. App. 3d 604.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.12 and 4.14.a.
11.30	County of Los Angeles	5/12/05	No cost/benefit analysis required by Water Code §§ 13225(c) and 13267 has been conducted of the compliance/ambient monitoring programs required in the proposed Basin Plan amendment, nor of the proposed special studies required under the amendment. The San Diego Superior Court in the *Arcadia* case invalidated that TMDL in part due to the	See responses to comments on the July 12, 2004 draft – comment No. 3.9.

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			Regional Board's failure to conduct such a cost/benefit analysis prior to adoption of that TMDL. To the extent that the proposed Basin Plan Amendment calls for ambient or compliance monitoring of reaches that are not listed as impaired, such monitoring is in violation of the above-cited provisions of the Water Code.	
11.31	County of Los Angeles	5/12/05	The 12 month timeline should be extended to 4 years to allow the results of any special studies to be incorporated into the implementation plan.	The deadline for submittal of the draft implementation plan has been extended to 48 months and the deadline for submittal of the final implementation plan has been extended to 54 years. However, cities need to move forward with implementation as soon as possible based on the information provided in the TMDL. Cities can revise implementation plans when new information becomes available.
12.1	WATER	5/12/05	This comment applies to the Ballona Creek Estuary Toxic Pollutant (sediment TMDL) and is not applicable to the Ballona Creek Metals TMDL.	N/A
12.2	WATER	5/12/05	The inevitable outcome of CTR-based WLAs will be that the CTR criteria will be applied inappropriately as not-to-be-exceeded, end-of-pipe limits, once the Metals TMDLs are adopted and NPDES permit limits must be consistent with the WLAs – an approach not appropriate for storm water.	See responses to comments on the July 12, 2004 draft – comment Nos. 3.1 and, 4.2. See comment No. 6.2 herein. .
12.3	WATER	5/12/05	The Board should undertake more stakeholder involvement and conduct further workshops to more fully consider comments.	The Board has held three workshops on the proposed TMDLs. Numerous municipal stakeholders participated in the process leading to the development of this TMDL.

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				Local and state agencies have been consulted at numerous steps. These consultations have resulted in lengthy compliance schedules for municipal dischargers, and significant adjustments to the TMDL.
12.4	WATER	5/12/05	The TMDL is not technically sound, it does not incorporate cost-effective approaches, and is not consistent with state and federal policies.	The TMDL is technically sound, it incorporates cost-effective approaches, and it is consistent with state and federal policies. See responses to comments on the July 12, 2004 draft – comment Nos. 4.11, , 4.11.a, 7.4, 12.7,and 12.9. The TMDL implements existing water quality objectives under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL complies with section 303(d)(1)(C) of the Clean Water Act and the express national policy that the discharges of toxic pollutants in toxic amounts be prohibited. (33 U.S.C. § 1251(a)(3).)
13.1	CPR	5/12/05	The revised metals TMDLs remain contrary to law. The prior comments dated August 26, 2004 are incorporated herein in their entirety.	See response to previous comments.
13.2	CPR	5/12/05	The Regional Board has failed to comply with its statutory obligations under Water Code Sections 13000, 13240, and 13241.	See responses to comments on the July 12, 2004 draft – comment No. 4.11.
13.3	CPR	5/12/05	The recent Court decision of *City of Burbank v. SWRCB* confirms the importance of considering Water Code Section 13241 factors and	See response to comment No. 6.7 herein..

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			economics prior to issuing an NPDES permit and in developing water quality standards.	
13.4	CPR	5/12/05	Water Code Section 13241 factors and Section 13000 policies must be genuinely considered in developing and implementing the metals TMDLs. Any formulation or amendment of a water quality control plan, where water quality standards or objectives are being modified, as in the case of the metals TMDLs, which translates narrative water quality objectives into numeric standards, requires the consideration of Sections 13000 and 13241. See *United States of America v. State Water Resources Control Board*. Further evidence is contained in the Vassey and Atwater memorandums.	See responses to comments on the July 12, 2004 draft – comment No. 4.11. The TMDL is implementing specific numeric criteria established by USEPA. The Regional Board is not and could not be construed as "establishing" a water quality objective under Water Code section 13241.
13.5	CPR	5/12/05	Additional reports evidence the significant costs and economic impacts from these metals TMDLs. See *Storm Water Cost Survey, Alternative Approaches to Storm Water Quality Control, Review of NPDES Storm Water Cost Survey,* and *Analysis of the TMDL for Metals in the Los Angeles River and Tributaries with Emphasis on Implementation*, which estimates costs approaching 15 billion. The Board must consider these and other reports under Section 13241.	Staff has considered the reports sited by the commentor in estimating costs. See responses to comments on the July 12, 2004 draft – comment Nos. 5.6 and 4.11,.
13.6	CPR	5/12/05	EPA expressly refrained from considering the economic impacts of CTR as applied to storm water because of its position that existing BMPs in the Cities 1996 NPDES permit were sufficient to meet CTR. EPA was not intending to impose strict numeric limits on municipalities nor costly end-of-pipe controls.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.2 and 8.1.
13.7	CPR	5/12/05	The metals TMDLs continue to impose monetary requirements through the requirement of compliance monitoring and special studies on the cities without compliance with the cost benefit requirements under Water Code Sections 13165, 13225, 13267, and the CWA.	See responses to comment No. 10.6 herein.
13.8	CPR	5/12/05	No assimilative capacity study has been conducted. Instead, the TMDLs rely upon the need for future studies to evaluate site-specific toxic	An assimilative capacity study was conducted. The assimilative capacity is

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			effects of metals.	equal to the hardness-adjusted CTR-based numeric target times a critical flow for dry weather and a range of flows for wet weather. Sufficient data was used, and where data was limited, assumptions were clearly stated. Translators were used to convert from dissolved CTR objectives to total recoverable metals numeric targets.
13.9	CPR	5/12/05	The TMDLs do not include an implementation plan and appropriate load allocations for nonpoint sources. There has not been a thorough analysis of pollutant loading from all sources. A specific LA should be assigned to the USFS, as was done in the San Gabriel River Trash TMDL. The WLAs assigned to the cities do not consider any of the LAs that have been assigned or should be assigned to nonpoint sources.	The staff report demonstrates that all sources have been considered and that there is an understanding of pollutant loading sources and the amounts and timing of pollutant discharges. Waste load allocations and load allocations have been assigned to all point and nonpoint sources in the watershed. The Regional Board will implement load allocations through the authority contained in sections 13263 and 13269 of the Water Code and in conformance with the SWRCB Nonpoint Source Implementation and Enforcement Policy.
13.10	CPR	5/12/05	To apply TMDLs or any part thereof, such as waste load allocations, to an unlisted water body, and for waters not identified in the Consent Decree, is contrary to State and federal law. The Board must consider factors in Water Code section 13241 and the policies in section 13000 when applying WLAs to unlisted water bodies because this is not authorized or required by the CWA. There is no authority in the Water Code to apply WLAs to unlisted water bodies. There is a lack of sufficient source analysis to do so.	See response to comment Nos. 6.7 and 7.13 herein.

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13.11	CPR	5/12/05	The metals TMDL is contrary to law because it imposes waste load allocations for impairments based on potential uses to be made of subject water bodies contrary to 33 U.S.C. § 1313(d)(1)(A) & (C) and 40 CFR § 130.2(d) and CWA section 1313(c)(2)(A). The water bodies in issue have intermittent or low-flow conditions, there have been hydrologic modifications, and attainment of the use would result in substantial and widespread economic and social impacts. The State should remove the non-existing use. (40 C.F.R. § 131.11(g).)	The commenter misreads and misapplies section 303(d) of the Clean Water Act. Consideration of specific "uses to be made" is only relevant in establishing the priority list required under section 303(d)(1)(A). It would make sense to focus on "uses to be made" in determining whether to tackle one TMDL before another. However, section 303(d)(1)(A) makes clear that the a water body is impaired if existing conditions "are not stringent enough to implement any water quality standard applicable to such waters." Moreover, section 303(d)(1)(C) requires the TMDL to be "established at a level necessary to implement the applicable water quality standard." This TMDL is being developed to meet water quality objectives set to protect the past, present, and probable beneficial uses (CWC § 13241) of the Los Angeles River as identified in the Basin Plan, and to specifically implement the numeric water quality standards established in the CTR. These beneficial uses must be protected year-round. (Basin Plan page 2-1) Moreover, the toxicity standards (which are a reflection of national policy prohibiting the discharge of toxic pollutants in toxic amounts) are designed to protect presumptive uses under section 101 of the Clean Water Act. The CTR criteria are set to

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				protect both existing and potential beneficial uses of the water body.
13.12	CPR	5/12/05	The TMDL is improperly being developed to address the impairment of "potential" beneficial uses, an action which is not required under the Clean Water Act, requiring a full consideration of the factors under Water Code section 13241 and the policies under section 13000.	See response to comment 13.11 herein. See also response to comments on the July 12, 2004 draft – comment No. 4.11.
13.13	CPR	5/12/05	The TMDL remains overly technical, ambiguous, and impossible to understand, contrary to the APA and resulting in the cities and the public being denied due process of law. Commentor cited an opinion letter by Dr. Robert Patterson and the peer review comments of Professor Schroeder to argue that the TMDL lacks clarity.	See response to comment No. 10.10 herein. The opinion letter of Dr. Robert Patterson and the comments of Professor Schroeder to not apply to the Ballona Metals TMDL.
13.14	CPR	5/12/05	The proposed TMDLs lack clarity and are contrary to the APA because they do not provide an individual means of compliance by a municipality.	See response to comment No. 10.10 herein.
13.15	CPR	5/12/05	The proposed TMDLs violate the necessity, authority, and reference requirements of the APA as a result of the attempt to impose regulatory limits through the application of waste load allocations on unlisted water bodies. See Gov. Code section 11349.1.	See response to comment No. 10.10 herein.
13.16	CPR	5/12/05	The due process rights of the cities and the public at large have been violated by the Board's failure to provide a discussion and description of the modifications that have been made to this complicated set of documents and by the Board's failure to provide an opportunity to review the responses to the comments submitted on the initial draft of the TMDLs.	See response to comment No. 1.1 herein.
13.17	CPR	5/12/05	The requirements of CEQA have not been met because the substitute document inappropriately determines that the project could not have a significant environmental impact. The substitute document fails to list the mitigation measures or feasible alternatives that would reduce the	See response to comment No. 10.9 herein.

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			acknowledged impacts to a level of insignificance. The finding of overriding considerations concedes the fact that significant impacts are not mitigated or avoided.	
13.18	CPR	5/12/05	The substitute document fails to evaluate reasonable alternatives to the TMDL, which is the proposed activity, such as an atmospheric deposition approach, load allocations to nonpoint source entities, or a non-numeric iterative approach.	See response to comments on the July 12, 2004 draft – comment Nos. 3.34, 4.5, 4.12, and 4.14.a.
13.19	CPR	5/12/05	The Board has segmented the project in violation of CEQA by not considering the series of TMDLs for the Los Angeles River.	Even though the Regional Board is not required to consider potential impacts of complying with multiple TMDLs, the implementation section of the staff report considers a multi-pollutant approach to achieving compliance, thus the environmental impacts analyzed applies to multiple TMDLs. Also see response to comment No. 10.9 herein.
13.20	CPR	5/12/05	The substitute document fails to identify and evaluate individual impacts of the project and improperly defers analysis. The existence of alternative methods of compliance with a new rule or regulation does not render the environmental impacts to uncertain or speculative to evaluate. See *County Sanitation District No. 2* v. *County of Kern*.	See response to comment No. 10.9 herein.
13.21	CPR	5/12/05	A bare checklist does not comply with CEQA. The factual basis for any disputed environmental findings must be explained.	See response to comment No. 10.9 herein.
13.22	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Earth" by ignoring faults, liquefaction zones, slope	See response to comments on the July 12, 2004 draft – comment Nos. 4.a.3-4.a.6. Also see response to comment No. 10.9 herein.

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			stability, soil erosion, and soil settlement.	
13.23	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Air Quality".	See response to comments on the July 12, 2004 draft – comment Nos. 4.a.7-4.a.8. Also see response to comment No. 10.9 herein.
13.24	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Water" by ignoring hazards from flooding, ground water quality, recharge, and erosion.	See response to comments on the July 12, 2004 draft – comment Nos. 4.a.9 and 4.a.10. Also see response to comment No. 10.9 herein.
13.25	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Plant Life" and "Animal Life" by ignoring habitat losses, scouring, and changes in river flow.	See response to comments on the July 12, 2004 draft – comment Nos. 4.a.5 and 4.a.11. Also see response to comment No. 10.9 herein.
13.26	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Present and Planned Land Use" by ignoring conflicts with zoning, general plans, and local coastal programs.	See response to comment No. 10.9 and 11.23 herein.
13.27	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Natural Resources" by ignoring mineral resources.	See response to comment No. 10.9 herein.

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13.28	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Risk of Upset" and/or "Human Health" by ignoring contaminated soils and hazardous emissions.	See response to comment No. 10.9 herein.
13.29	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Population" or "Housing" by ignoring impacts to housing.	See response to comment No. 10.9 and 11.24 herein.
13.30	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Transportation" or "Circulation" by ignoring local traffic conditions and short-term impacts.	See responses to comments on the July 12, 2004 draft – comment No. 4.a.16. Also see response to comment No. 10.9 herein.
13.31	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Public Service" by ignoring restricted access to fire stations, police stations, and schools due to construction and by diverting government services from other areas and by using land for BMPs that would otherwise be park land and recreational facilities.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.a.18-4.a.20. Also see response to comment No. 10.9 herein.
13.32	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Utility and Service Systems" by ignoring alterations to drainage and the export of construction soil.	See responses to comments on the July 12, 2004 draft – comment Nos. 4.a.25-4.a.29. Also see response to comment No. 10.9 herein.
13.33	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the	See responses to comments on the July 12, 2004 draft – comment No. 4.a.32.

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			category of "Aesthetics".	Also see response to comment No. 10.9 herein.
13.34	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Recreation" by ignoring access restrictions to park land or recreational and open space areas posed by construction of BMPs.	See responses to comments on the July 12, 2004 draft – comment No.4.a.33. Also see response to comment No. 10.9 herein.
13.35	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites under the category of "Archeological/Historical".	See response to comment No. 10.9 herein.
13.36	CPR	5/12/05	The substitute document has failed to apply the "fair argument" standard to the potential environmental impacts, to analyze the potential compliance methods, or to take into account specific sites in relation to vectors and environmental justice issues because it is requiring the poorest in the watershed to solve the problems that are not of their own making.	See responses to comments on the July 12, 2004 draft – comment No.4.a.31. Also see response to comment No. 10.9 herein.
13.37	CPR	5/12/05	The conclusion that there are no "Mandatory Findings of Significance" is not supported by any data or evidence in the substitute document. The substitute document should be compared to the City of Los Angeles IRP as the TMDL proposed implementation of the IRP in 30% of the watershed.	See responses to comments on the July 12, 2004 draft – comment No. 4.11.b. Also see response to comment No. 10.9 herein.
13.38	CPR	5/12/05	The substitute document fails to identify the cumulative impacts and growth-inducing impacts of the project, such as the generation of criteria pollutants.	See response to comment No. 10.9 herein.
13.39	CPR	5/12/05	The substitute documents contain no mitigation measures and has improperly deferred mitigation analysis to an undetermined future time.	See response to comment No. 10.9 herein.
13.40	CPR	5/12/05	The Board has not complied with CEQA's consultation requirements	See response to comment No. 10.9 herein.

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			under section 3778 of the certified program. For example there is no indication that the Board has consulted with the vector control district or the air quality management district.	
13.41	CPR	5/12/05	The statement of overriding considerations is deficient by inappropriately pre-determining that the undisclosed, unknown, but unmitigatable adverse impacts are outweighed by the necessity of implementing the TMDL.	See response to comment No. 10.9 herein.
13.42	CPR	5/12/05	The metals TMDLs have not been based on scientifically valid data, proper technical conditions do not exist to support the development of the proposed TMDLs and the proposed TMDLs are not suitable for calculation. See 33 U.S.C.§ 1313(d), 43 Fed. Reg. 60662, and 40 CFR § 130.4(a) and (b). Local agencies have not been fully consulted, there has been a complete lack of intergovernmental coordination, and the proposed TMDLs would result in the imposition of various unfunded mandates in violation of the California Constitution and other State and federal laws.	Scientifically valid data was used in the development of the TMDL and the technical analysis supports the TMDL. All assumptions are clearly stated in the staff report. The TMDL's scientific portions have been subjected to external scientific peer review in conformance with Health and Safety Code section 57004. Numerous municipal stakeholders participated in the process leading to the development of this TMDL. Local and state agencies have been consulted at numerous steps. The Regional Board is not bound by Water Code section 13144, but it takes its outreach efforts to local agencies seriously. These efforts have satisfied the requirements of section 13240 of the Water Code. These consultations have resulted in lengthy compliance schedules for municipal dischargers, and significant adjustments to the TMDL.

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				See response to comments on the July 12, 2004 draft – comment Nos. 4.15. See also response to comment Nos. 1.1 and 13.8 herein.
14.1	TECs Environmental	5/12/05	The Regional Board has not met the responsibility of CEQA's evaluation criteria as required by the certified regulatory program because the CEQA checklist is outdated and does not follow the current CEQA checklist found on the Secretary of Resources website. The outdated checklist does not include aesthetics, human health, and hazards and hazardous materials. The outdated checklist does not address violations of water quality standards, placement withing a 100-year flood hazard area, and hazardous materials.	See response to comment No. 10.9 herein.